IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 79 OF 2004

STATE
Through Public Prosecutor,
High Court of Bombay at Panaji,
Panaji-Goa. ... Applicant

versus

1. Suhasini Palyekar

2. Anita Palyekar

3. Chandrakan Palyekar

4. Narendra Palyekar

5. Namdev Satardekar

All residents of
Kiran Pani, Palyem
Pernem - Goa. ... Respondents

Mr. S. N. Sardessai, Public Prosecutor for the State.

Mr. J. P. Mulgaonkar, Advocate for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 24TH JUNE, 2004.

ORAL ORDER

The State seeks leave to appeal against the Judgment/Order dated 12th December, 2003, passed by the learned Judicial Magistrate, First Class, Pernem, in Criminal Case No.29/S/1997, acquitting the Accused/Respondents under Sections 323, 325, 504 and

506 r/w 34 of Indian Penal Code.

2. The case against the Accused, upon a complaint filed by P.W.4, Rajaram Palyekar, was investigated by the Police and a charge-sheet was filed under Sections 143, 147, 504, 323, 325, 148, 506 r/w 149 of Indian Penal Code and accordingly the learned Judicial Magistrate, First Class, Pernem, was pleased to frame a charge against the said Accused under the said Sections. The learned Judicial Magistrate, First Class, Pernem, thereafter by his Judgment dated 20th March, 1999, convicted the Accused and sentenced them to fine/imprisonment, etc. Against the said Judgment of conviction and sentence, the Accused filed an Appeal before the Sessions Court, Panaji, being Criminal Appeal No.24/1999 which was decided by Judgment dated 29th September, 2001. In the said Judgment/Order dated 29th September, 2001, the learned Sessions Judge, Panaji, inter alia, came to the conclusion that the requirements of Section 313 of the Code of Criminal Procedure were not complied with and remanded the case to the learned Judicial Magistrate, First Class, Pernem, for compliance with the requirements of the said Section 313 of Code of Criminal Procedure. Although, the learned Judicial Magistrate, First Class, Pernem, could have and in fact ought to have taken a fresh statement of the Accused under Section 313 of the

Code of Criminal Procedure and proceeded either to convict or acquit the Accused, the learned Judicial Magistrate, First Class, Pernem, proceeded with a fresh trial of the Accused under Sections 323, 325, 504 and 506(II) r/w 34 of Indian Penal Code. Apparently, the learned Judicial Magistrate, First Class, Pernem, proceeded with the said de novo trial without any objection on the part of the prosecution or the Accused and, de novo recorded the evidence of the prosecution witnesses. This time, the learned Judicial Magistrate, First Class, Pernem, was pleased to acquit the Accused by Judgment/Order dated 12th December, 2003, against which the State is now seeking leave to appeal.

3. I have heard Mr. S. N. Sardessai, learned Public Prosecutor on behalf of the State and Mr. J. P. Mulgaonkar, learned Counsel on behalf of the Respondents/Accused. The evidence recorded by the learned Judicial Magistrate, First Class, Pernem, has also been read with the assistance of the learned Public Prosecutor. It is the submission of the learned Public Prosecutor that the appreciation of evidence of the prosecution witnesses particularly those who were injured and whose injuries were corroborated by the medical evidence, has been perverse.

4. On the other hand, Mr. J. P. Mulgaonkar,

learned Counsel has submitted that based on the evidence of the said prosecution witnesses, the learned Judicial Magistrate, First Class, Pernem, has chosen to acquit the Accused because the prosecution had not examined any other independent witnesses and their case had rested only on the evidence of the witnesses who were interested and related. Mr. Mulgaonkar has next submitted that the view taken by the learned Judicial Magistrate, First Class, Pernem, is one of the views which has been reasonably taken and, therefore, no leave sought for ought to be granted to the State.

5. One of the grievances made by Mr. Sardessai, learned Public Prosecutor is that the learned Judicial Magistrate, First Class, Pernem, while framing de novo charge against the Accused on or about 23rd November, 2001, did not assign any reason as to why charge had been framed under the said Sections and not under the Sections for which the charge-sheet was filed. In fact, the relevant roznama of 23rd November, 2001, could also not be located in order to find out why the learned Judicial Magistrate, First Class, Pernem, had chosen to restrict a charge only to a few Sections when her learned Predecessor had framed a charge under all the Sections for which the charge-sheet was filed.

6. That apart, in my opinion, this is a case

where one learned Judicial Magistrate, First Class convicted the Accused on the basis of the evidence but the other Judicial Magistrate, First Class chose to acquit the Accused. Being so, this would be a fit case where leave ought to be granted to the State so that the entire evidence that the prosecution has produced could be examined de novo.

7. Leave granted. Appeal to be registered.

8. Mr. Mulgaonkar, learned Counsel accepts notice on behalf of the Respondents/Accused. Records and Proceedings to be sent back to the learned Judicial Magistrate, First Class, Pernem, to be arranged in accordance with the criminal manual issued by this Court and thereafter remit the Records back to this Court. Pending hearing and disposal of the Appeal, Accused to be released on Bail by executing Bonds with one surety, in the same amount as furnished by them earlier before the trial Court, to the satisfaction of the trial Court.

N. A. BRITTO, J.

RD.